

Date: August 15, 2011

To: Thomas J. Bonfield, City Manager

Through: Wanda S. Page, Deputy City Manager

From: David Boyd, Finance Director
Joseph W. Clark, Financial Operations Manager
Paul Mason, General Billing & Revenue Collections Manager

Subject: Beer and Wine Privilege License Issuance

Executive Summary

The purpose of this Agenda Item is to authorize the Finance Department to issue beer and wine licenses to businesses on the attached list. The list includes a total of 221 businesses; 16 new businesses, and 205 renewals. Any establishment wishing to sell beer and wine in the City of Durham must follow two separate procedures. The first is to obtain an ABC permit that authorizes an establishment to sell beer and wine. Establishments holding an ABC permit must also obtain a City beer and wine privilege license.

The General Billing and Revenue Collections Division of the Finance Department verifies that each business is located within the City limits of Durham and holds a valid ABC Permit. With the cooperation of the State Alcohol Law Enforcement Unit, the Police Department investigates and pursues enforcement actions related to permittees.

Recommendation

To approve the attached list of establishments for a local beer and wine privilege license.

Background

The ABC Commission has the sole authority to permit the sale of beer and wine. Prior to issuing an ABC permit notice is given to the Police Department, which has been designated by the City Council as the reviewing agency. The Police Department has 15 days to file a written objection with the ABC Commission to the issuance of the permit. In addition to complying with all applicable building and fire codes, other factors considered by the Commission are:

- Reputation, character and criminal record of the applicant;
- Number of places already holding ABC permits in the neighborhood;
- Parking facilities and traffic conditions in the neighborhood;
- Kinds of businesses already in the neighborhood;
- Whether the establishment is located within 50 feet of a church, or a public, religious, or other nonpublic school;
- Zoning laws;
- Recommendation of the local governing body; and

- Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of this business at that location would be detrimental to the neighborhood, such as:
 - Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at the location.
 - Evidence of illegal drug activity on or about the licensed premises.
 - Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises.

The Commission is given sole power, at its discretion, to determine the suitability and qualifications of an applicant for a permit. The Police Department is currently handling the review of ABC permit applications and recommendations concerning the suitability of a person or a location to hold an ABC permit.

For violations of ABC laws, the Commission is also empowered to suspend or revoke an ABC permit. Any such revocation automatically revokes the local City license. The applicant must be allowed a state administrative hearing if the case is contested.

City License Issuance - Local regulations require that a person holding an ABC permit for the sale of beer and wine obtain a City License and pay an annual tax. Local governments can refuse to issue a license if it finds the applicant has committed any act or permitted any activity in the preceding year that would be grounds for revocation of an ABC permit. Prior to such action, however, Council is required to offer the applicant a formal, quasi-judicial hearing and render a decision in accordance with all of the procedural and substantive standards applicable to such a hearing procedure. This process may be somewhat duplicative because the ABC Board is already authorized to revoke permits for the same reasons (i.e. violation of the ABC laws) and the effect of such a revocation is to automatically revoke the related City license. The City is also given an opportunity to enter its objection with the ABC board prior to issuance of the permit. Additionally, local governments can petition the ABC Board to deny or revoke a permit by presenting evidence of acts that would be grounds for denial or revocation of an ABC permit under G.S. 18B-104. This would be in addition to and coordinated with investigative and enforcement actions taken by the Police Department.

NC General Statutes 105-113.70 and 18B-104 d. serve as the authorizing legislation for issuance of City beer and wine licenses. Businesses are divided into the following categories: Restaurants, Grocery Stores, Convenient Marts, Service Stations and other similar businesses. The licenses, if granted, will be one of the following: beer on/off premises, wine on/off premises.

Issues and Analysis

The City Council has expressed concerns that some establishments selling beer and wine impact crime and other quality of life issues in the community. With the sole authority to grant permission to sell beer and wine resting with the ABC Board, the City is limited in its ability to directly control the negative influence of certain problem establishments engaged in the sale of beer and wine. The Police Department, with the cooperation of the community and Alcohol Law Enforcement, is pursuing enforcement in cases where calls for service and community concerns have warranted such action.

Alternatives

The City Council may:

- Approve the request to approve beer/wine license;
- Deny the request and hold a quasi-judicial proceeding to make findings as required under G.S. 105-113.71(a)

Financial Impact

<u>Type of License</u>	<u>Number of Licenses</u>	<u>Total Fees</u>
Beer and Wine (New)	16	\$ 460.00
Beer and Wine (Renewal)	<u>205</u>	<u>\$ 5,694.91</u>
Total	221	\$ 6,154.91

SDBE Summary

Due to the nature of this agenda item, review by the Office of Equal Opportunity/Equity Assurance is not necessary.

Attachment